

REMARKS (37 CFR 1.111)

35 U.S.C. § 103(a) Rejections

Pursuant to 35 U.S.C. §103(a), the Examiner has rejected Claims 1, 2, 4-6, and 8-12 on the basis that such claims are obvious in light of Brigati, Pat. No. 4,731,335, and Claims 1-3, and 5-20 on the basis that such claims are unpatentable over Chianese, Pat. No. 5,804,141. Applicant hereby respectfully traverses the rejections and argues as follows:

Brigati

With respect to Brigati, the claimed invention is distinguishable from the cited prior art. Although the Examiner appears to assume that all elements of Claim 1 (the only independent claim) are taught in Brigati, and only the cassette is not taught, this is not the case.

The method of delivery of Brigati, contrasts with Applicant's method of delivery of a staining reagent. The two different methods of delivery are believed to be incompatible with one another. The system of Applicant's Claim 1 requires a film that comprises a container for holding the chemical. In Brigati, the "film" cited by the Examiner is completely different in both form and function. Thus, Brigati specifically teaches away from Applicant's invention by its inclusion of the elastic member 64. The functionality described in Brigati is to provide a elastic member 64 laid horizontally over the slide with holes in it that effectively create vertical walls around sections of the slide into which a droplet of fluid can be placed. In contrast, Applicant's "film" is located in the cassette and comprises a container. It is not a sheet with holes as described by Brigati.

Further, Applicant's cassette is a functional part of the claimed system. It is adapted to hold the slide device and contain the film within itself where it can deliver a chemical to the slide device's injection port. Thus, the cassette is more than a simple housing. And, the Examiner provides no evidence that the cassette (Applicant's cassette with its functionality, nor the even the simple housing described by the Examiner) would have been obvious to one of ordinary skill in the art.

The cap referred to by the Examiner, and as claimed in Claims 6 and 14, is further functionality of the cassette that is neither shown nor taught in the prior art.

While each of the other dependent claims -- 2, 4-6, and 8-12 -- add elements that are not taught by Brigati, because the independent Claim 1 is not obvious, its dependent claims are likewise not obvious.

Chianese

Like Brigati, Chianese discloses a device that does not teach or suggest Applicant's invention. In Chianese, a pair of rollers is moved over the reagent strip to squeeze out chemicals. However, Applicant's claim 1 differs from the Chianese reference in providing a moving strip and a fixed injection port. An inspection of the Chianese specifications reveal that a reagent passage way connects to each of the chambers and connects to a common passage way, unlike Applicant's film upon which a piston acts to deliver an injection of a chemical to the head space. Applicant does not squeeze the reagent passage way instead uses an injection port. The injection port will inject a chemical (when the piston strikes the film) into the head space. Using a reagent strip with a reagent passage way requires the continuous movement of the film and multiple capsules across the pressurized rollers before any reagent reaches the head space.

Applicant voids this possibility. With respect Chianese Figure 5, if the pressurized rollers only moved over the first one or two capsules there is no indication that injection into the head space would result. Instead, it is the continuous action (pressure) of the twin rollers on a reagent strip which causes the reagent chemicals ultimately to get onto the specimen. This is not an injection port as claimed by Applicant.

Applicant's claimed system is fundamentally different from Chianese, who provides for a remote slide and an intermediate passageway such that chemicals can be sequentially introduced to the slide from an intermediate passageway without placing the chemical capsules sequentially adjacent to the slide. Applicant must insert into the cassette, the specimen slide so that it is at a point adjacent to one of the multiplicity of chemical bearing capsules to provide for direct

introduction of the chemical into the head space. As can be seen with reference to the Chianese patent, for example Fig. 1, the Chianese slide can be placed anywhere with respect to the rollers and it will not affect the introduction of the chemical into the head space.

Again, as in the Brigati argument, Applicant's cassette is an integral, functional part of Applicant's invention that provides more than just a housing. It contains the film. Acts to position the slide such that the film delivers the chemical to the injection port. Nothing in Chianese teaches or suggests the cassette. And again, the Examiner has provided no evidence that such a cassette was obvious, nor that any instrumentation containment device could have been combined with the cited reference. Because Claim 1 is non-obvious, likewise its dependent claims, which add unique elements, are non-obvious.

CONCLUSION

The Brigati and Chianese disclosures are unrelated to Applicant's disclosure and claims. That is, they do not envision the cassette (nor other claimed elements of Applicant's invention), and thus teach away from Applicant's invention. The functionality described in Applicant's cassette is greater than a simple housing, and thus not obvious. Further, even if the cassette were a simple housing, nothing suggests a housing's combination with the other elements of Applicant's claimed invention, making it non-obvious.

In view of the above, it is submitted that the claims are in a condition for allowance. Reconsideration and withdrawal of the rejections is hereby requested. Allowance of Claims 1-20 at an early date is solicited.

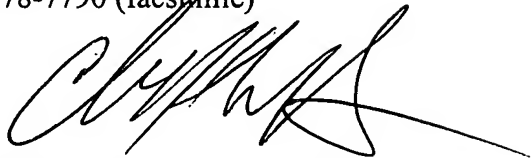
If impediments to allowance of Claims 1-20 remain and a telephone conference between the undersigned and the examiner would help remove such impediments in the opinion of the examiner, a telephone conference is respectfully requested.



RECEIVED
DEC 16 2003
TC 1700

Respectfully submitted,

JACKSON WALKER, L.L.P.
112 East Pecan Street, Suite 2100
San Antonio, TX 78205
(210) 978-7700 (telephone)
(210) 978-7790 (facsimile)

By: 
Cline H. White, Reg. No. 45,213

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited on the date shown below with the United States Postal Service in an envelope addressed to the "Mail Stop Response – Fee, Commissioner of Patents and Trademarks, Alexandria, VA. 22313-1450", as follows:

<u>37 CFR 1.8(a)</u>	<u>37 CFR 1.10</u>
<input checked="" type="checkbox"/> With sufficient postage as First Class Mail. Date: <u>12-8</u> , 20 <u>03</u>	<input type="checkbox"/> As "Express Mail Post Office to Addressee", Mailing Label No. _____. Date: _____, 20__


Signature of Person Mailing Paper or Fee

CAROLYN HILL
Printed Name of Person Mailing Paper or Fee



RECEIVED

DEC 16 2003

TC 1700

Respectfully submitted,

JACKSON WALKER, L.L.P.
112 East Pecan Street, Suite 2100
San Antonio, TX 78205
(210) 978-7700 (telephone)
(210) 978-7790 (facsimile)

By: _____
Cline H. White, Reg. No. 45,213

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited on the date shown below with the United States Postal Service in an envelope addressed to the "Commissioner of Patents and Trademarks, Washington, D.C. 20231", as follows:

<u>37 CFR 1.8(a)</u>	<u>37 CFR 1.10</u>
<input type="checkbox"/> With sufficient postage as First Class Mail. Date: _____, 20__	<input type="checkbox"/> As "Express Mail Post Office to Addressee", Mailing Label No. _____. Date: _____, 20__

Signature of Person Mailing Paper or Fee

Printed Name of Person Mailing Paper or Fee